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Arraignment

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 820-01 (JSR)

5 CESAR ALTIERI SAYOC,

6 Defendant.

7 -----x

8 November 15, 2018
9 12:00 p.m.

10
11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14
15 APPEARANCES

16
17 GEOFFREY S. BERMAN,
18 United States Attorney for the
19 Southern District of New York
20 EMIL JOSEPH BOVE, III,
21 JANE KIM,
22 JASON A. RICHMAN,
23 SAMUEL S. ADELSBERG,
24 Assistant United States Attorneys

25
26 FEDERAL DEFENDERS SERVICES UNIT
27 Attorneys for defendant Sayoc
28 BY: SARAH J. BAUMGARTEL,
29 AMY GALLICCHIO,
30 Assistant Federal Defenders

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1 (In open Court)

2 (Case called)

3 THE COURT: Good afternoon. So we're here first for
4 arraignment. Let me ask defense counsel, has the defendant
5 read and discussed with counsel the indictment in this case?

6 MS. BAUMGARTEL: Yes.

7 THE COURT: Would you like it read here in open court,
8 which would only take about an hour and a half, or do you want
9 to waive the public reading?

10 MS. BAUMGARTEL: Your Honor, we will waive the
11 reading.

12 THE COURT: Do you wish a plea of not guilty to be
13 entered at this time?

14 MS. BAUMGARTEL: Yes, please.

15 THE COURT: A plea of not guilty will be entered.

16 So let's talk about scheduling. How long does the
17 government want for the completion of discovery?

18 Incidentally, I have reviewed and just signed the
19 protective order, which I will give to my Courtroom Deputy to
20 docket. How long does the government want for discovery?

21 MR. BOVE: Thank you, Judge.

22 The government is asking until December 13th to
23 complete Rule 16 discovery except with respect to expert
24 discovery that relates to ongoing analysis at Quantico.

25 THE COURT: Let's take it one step at a time. All

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1 discovery except expert discovery by December 13th?

2 MR. BOVE: Yes, Judge.

3 THE COURT: Why do you need until December 13th?

4 MR. BOVE: It is because of an ongoing canvas for
5 surveillance video principally held by the Post Office that
6 we're working on collecting and analyzing and putting into a
7 format that can be made available to defense counsel. We have
8 actually started discovery.

9 THE COURT: You are talking it will be rolling
10 discovery, but with an outside deadline of December 13th other
11 than expert discovery. Is that right?

12 MR. BOVE: Yes, Judge.

13 THE COURT: All right. That is acceptable.

14 What is the story on experts? What kind of expert do
15 you have in mind?

16 MR. BOVE: There are a number of forensic disciplines
17 that we expect to offer expert testimony relating to. They
18 will include an expert on explosives and destructive devices,
19 an expert on the chemistry of the explosive material in
20 devices, an expert relating to DNA analysis, an expert related
21 to fingerprint analysis and potentially other experts who
22 looked at things like trace materials on the packages and
23 destructive devices in the packages.

24 THE COURT: When do you want to make the disclosures
25 for your experts?

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1 MR. BOVE: We ask for January 31st. To the extent we
2 can make them earlier, we will, Judge. Those will be, I
3 anticipate, quite fulsome disclosures, not just the expert's
4 opinions, but all of their underlying case files.

5 THE COURT: I will give you that, on the assumption
6 that the expert disclosures will be the kind of reports that
7 would comply with the expert disclosures under federal civil
8 rules. In other words, full expert reports, not just a couple
9 of paragraphs from the government, but with that understanding,
10 I will give you till January 31st.

11 MR. BOVE: Absolutely. Thank you, Judge.

12 THE COURT: Very good. So putting aside the expert
13 part, how long does the defense want for any motions?

14 MS. BAUMGARTEL: Your Honor, I expect you'll say no,
15 but I am going to at least ask if we can come back for one
16 conference before we set a motion schedule so we can get a
17 better sense of what direction the case is headed.

18 It is my understanding from the government that the
19 fact discovery is somewhat voluminous. We will probably have
20 to engage in some travel with respect to some of this. I think
21 there is some investigation to be done in South Florida. Some
22 of the physical evidence for us to view may not be here. We
23 may have to travel to do that. We also just would like a
24 little bit of additional time to investigate before we
25 determine whether we're going to file motions, to determine if

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1 there is any possibility of a pretrial disposition.

2 So for those reasons, I would ask to come back
3 approximately 30 to 60 days after the government completes
4 discovery, but if not, then I am familiar with your Honor's
5 typical practice. This is a slightly more complex case than
6 the average one, and there are, as your Honor is aware, not
7 just the allegations in the indictment, but there are other
8 devices that may have been involved. There are different
9 jurisdictions that maybe involved.

10 THE COURT: So you were very prudent to start your
11 application by saying that you thought I would deny it, and you
12 were, as always, right on target.

13 MS. BAUMGARTEL: I have to try, your Honor.

14 THE COURT: But I am willing to give you more than the
15 usual amount of time in filing of motions in light of the
16 circumstances you just mentioned. So I am willing to give you
17 for -- these are for all motions other than motions addressed
18 to experts, how about January -- let me get a 2019 calendar --
19 how about January 15th? That is, instead of my normal two
20 weeks, that is two months.

21 MS. BAUMGARTEL: Well, your Honor, but that is a month
22 after discovery is completed. What about a little bit longer
23 than that? What about something like 45 days to 60 days after
24 discovery is completed?

25 THE COURT: You're planning on taking time off for the

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1 holidays? My gosh! I thought you were a lawyer!

2 All right. I'll give you to January 31st, the same
3 day that the government needs to file their expert submissions.
4 I think that dovetails nicely because we can then have a
5 further conference on -- let's look at February 7th.

6 THE CLERK: February 7th, a Thursday, trial, 4:00
7 o'clock sentence. It is a Columbia night.

8 THE COURT: Right, right, right. So what we'll do is
9 we'll do it at 3:30. I will excuse the jury early, so 3:30 on
10 February 7th. At that time if motions have been made that can
11 be dealt with orally, they will be. If we need to set a date
12 for the government to respond in writing, we'll set it then.

13 If the defense by then will know whether it is likely
14 they're going to make additional motions regarding the experts
15 and, if so, we'll set a date for those motions at that time as
16 well. I think given the nature of this case, we also ought to
17 set a trial date. So it sounds like all motion practice, even
18 on a worst-case scenario, will be completed by the end of
19 February, so what dates in April and May are counsel not
20 available for a trial?

21 MS. BAUMGARTEL: Your Honor, I have currently
22 scheduled I expect to be a multi-defendant trial in front of
23 Judge Crotty in April. In addition, I have a trial scheduled
24 May 6th in front of Judge Berman.

25 THE COURT: In front of?

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1 MS. BAUMGARTEL: Judge Berman. That I think will be
2 shorter, but I also have a trial scheduled on June 24th in
3 front of Judge Torres. So I --

4 THE COURT: So how about May 14th?

5 MS. BAUMGARTEL: Your Honor, I just don't think it
6 will be possible for us to prepare for -- it would not be
7 possible for me to adequately prepare this case with
8 back-to-back-to-back trials.

9 THE COURT: Yes, but the chances are 97 percent that
10 those cases will plead out.

11 MS. BAUMGARTEL: I think that is not correct.

12 The trial in front of Judge Berman is a felon in
13 possession where I think there is zero possibility of it
14 pleading. It is a shooting where the defendant's guideline
15 range will be double, I think the government says, the
16 statutory max, and the evidence is what it is. I don't think
17 that is going to plead.

18 In addition, the trial in front of Judge Crotty, the
19 case has been pending for quite some time that I also do not
20 think will be resolved by a plea.

21 THE COURT: Well, of course, I accept your
22 representation, contrary to all prior experience in criminal
23 cases in this Court and others. That is fine.

24 So when is your trial after that?

25 MS. BAUMGARTEL: That is June 24th. That I am not

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1 sure about, though I believe my colleague is likely to have a
2 trial in the summer.

3 MS. GALLICCHIO: Yes, I don't have a date yet set, but
4 I do have a matter before Judge Failla that is likely to
5 have --

6 THE COURT: I can't deal with cases that are that
7 uncertain.

8 MS. GALLICCHIO: I understand.

9 THE COURT: So when in June would you like to try
10 this?

11 MS. BAUMGARTEL: Your Honor, the end of June.

12 THE COURT: Okay. So we will set, unless the
13 government has any problem with this, we'll set the case down
14 for trial for June 25th. Now, how long a case does the
15 government expect?

16 MR. BOVE: This is obviously a preliminary estimate,
17 Judge, but I think right now we would estimate for three weeks
18 for our case in chief.

19 THE COURT: So there will be probably a couple of days
20 off there because of the July 4th weekend, but that's fine, the
21 jury will, I am sure, appreciate that short break in any event.

22 All right. So pursuant to Section 3161 of Title 18, I
23 will exclude from calculations under the Speedy Trial Act all
24 time between now and June 25th, finding such time is necessary
25 for the accommodation of defense counsel's trial schedule, the

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1 drafting and completion of all motion practice, the adequate
2 preparation for trial, and for those and other reasons, the
3 best interests of justice in excluding such time substantially
4 outweighs the interest of the public and the defendant in a
5 speedy trial.

6 THE CLERK: June 24th is the Monday of that week.

7 THE COURT: I am sorry. I was looking, of course, at
8 a 2018 calendar. It is June 24th, one day earlier, okay?

9 So anything else we need to take up today?

10 MR. BOVE: Not from us, Judge. Thank you.

11 MS. BAUMGARTEL: Your Honor, just to reiterate, I do
12 have a trial scheduled that date in front of Judge Torres that
13 is previously scheduled, so if that does go forward, I am not
14 sure how that would work. I understand your Honor's --

15 THE COURT: How many folks are there in the Federal
16 Defender's Office?

17 MS. BAUMGARTEL: Very, very fewer than the U.S.
18 Attorney's Office. We have no FBI agents whatsoever.

19 THE COURT: Well, stop bragging and tell me -- surely
20 with this much advance warning, you can reassign some of those
21 cases, at least that one.

22 MS. BAUMGARTEL: Your Honor, I understand.

23 We are stretched a little thin right now actually
24 because of some of the other terrorism/death penalty eligible
25 cases that have come through the office, so I also think that

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1 we are currently not fully staffed, as they say. We haven't
2 filled all the positions we have available.

3 I think this will probably be -- we'll probably add
4 another lawyer to accommodate the court's schedule, so it is
5 not just a matter of accommodating my schedule, but we are
6 going to be pushing work off on to our colleagues. So I am
7 going to make one more pitch for having a slightly later trial
8 date. I understand, I completely understand --

9 THE COURT: So I think there are two alternatives for
10 the court. One would be simply to require that the defendant
11 get new counsel because his present counsel seems to have such
12 a full plate that she can't even remotely meet the requirements
13 of the Speedy Trial Act, or to give you a slightly later date,
14 despite all these accommodations that I've just given you, on
15 your representation in open court that you will not ask for any
16 further adjournment on any grounds whatsoever.

17 MS. BAUMGARTEL: Your Honor, I appreciate your
18 magnanimity, if I can pronounce that word. I would ask the
19 court not to appoint new counsel for Mr. Sayoc. I think that
20 the Federal Defenders has the resources to do this case in
21 terms of some other knowledge from cases we have been working
22 on to date. My only hesitation in not pledging to ask for a
23 continuance is because we don't know what the expert discovery
24 is going to look like. We may need to get our own experts. To
25 the extent there is --

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1 THE COURT: You have months!

2 MS. BAUMGARTEL: Okay, okay.

3 THE COURT: So we're talking now you want a trial
4 date --

5 MS. BAUMGARTEL: Just with respect to, in addition, I
6 think this would qualify as a complex case under the speedy
7 trial statute, and for that reason I don't think we're in
8 violation of the statute.

9 THE COURT: Well, I don't think you're in violation of
10 the statute, I agree with that. I think, though, that the
11 spirit of the statute would be compromised if I were to go
12 beyond July under any set of circumstances. That is why I want
13 to set that in stone and make sure you understand it is set in
14 stone. You want a July date now, is what you want?

15 MS. BAUMGARTEL: Yes, please.

16 THE COURT: How about July 15th which, according to my
17 calendar, is National Pet Fire Safety Day?

18 MS. BAUMGARTEL: Your Honor, it may also make it
19 easier for us to find a jury because we will avoid the July 4th
20 holiday.

21 THE COURT: I have also excluded time through June. I
22 will now exclude time until July 15th for the same reasons
23 previously stated. All right.

24 Is there anything else we need take up?

25 MR. BOVE: No, your Honor. Thank you.

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1 MS. BAUMGARTEL: No. Thank you.

2 THE COURT: Very good. Thanks.

3 (Court adjourned)

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